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FARLEY v. THALHEIMER.

January 26, 1905.

[49 S. E. 644].

SLANDER—PRIVILEGED COMMUNICATIONS—ABUSE OF PRIVILEGE—MALICE—
BURDEN OF PROOF—QUESTIONS FOR JURY.

1. While it is within the province of the trial court to determine whether or not the occasion when slanderous words were spoken was privileged, yet whether words spoken on a privileged occasion were spoken with or without malice is a question for the jury, which cannot be taken from them where there is evidence tending to show malice in the utterance of the words.

2. Where words complained of as slanderous were privileged communications, the burden is upon plaintiff to prove actual malice, either by construction of the words, or by the attending facts or circumstances, or situation of the parties.

3. Strong and violent language, disproportional to an occasion otherwise privileged, may raise an inference of malice in the use of the language, and cause the loss of the privilege otherwise attaching to the communication.

4. The questions of good faith, belief in the truth of an alleged slanderous statement, and of the existence of actual malice, are for the jury.

5. Where the evidence on the material issues of the case is in conflict, it is for the jury to determine the credibility of witnesses and the weight of their testimony.

6. In an action for slander alleged to have been committed in the discharge of an employé for theft, evidence *held* to make a question for the jury on the issue of the existence of malice in the making of statements which were otherwise privileged.

WHEELWRIGHT et al. v. COMMONWEALTH.

January 26, 1905.

[49 S. E. 647.]

RAILROAD—PARALLEL LINES—CONSTITUTION—STATUTE—CONSTRUCTION.

Under Const., sec. 166 [Va Code 1904, p. cclxi], providing that the legislature shall have power to prevent, by statute repealable at pleasure, any railroad from being built parallel to the present line of the Richmond, Fredericksburg & Potomac Railroad Company, and the act concerning corporations (Acts 1902-04, p. 453, subc. 2, sec. 12 [Va. Code 1904, p. 542]), enacted pursuant thereto, providing that no railroad company chartered under the act shall have power to build any railroad parallel to its line, the paralleling of a short portion of that line for local purposes is not forbidden; the intent of the law being to prevent competition between Richmond and Washington, the termini of the roads.